STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 4, 2011
v	No. 290739 Oakland Circuit Court
MANJEET SINGH BHATTAL, Defendant-Appellant.	LC No. 2007-215305-FC

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of conspiring to deliver and/or possess with intent to deliver at least 1,000 or more grams of cocaine, MCL 750.157a; MCL 333.7401. Defendant was sentenced to 10½ to 30 years' imprisonment. We affirm.

I. SUFFICIENCY OF THE EVIDENCE

Defendant maintains that there was insufficient evidence to support his conviction. We disagree. A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine "whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007) (citation and quotation marks omitted). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citation omitted).

To establish a conspiracy, the prosecution must show that there was an agreement, either express or implied, between two or more persons to commit an illegal act, or a legal act accomplished in an illegal manner. MCL 750.157a. "An overt act by the defendant is not required to prove a conspiracy, because the essence of the offense is the agreement itself." *People v Meredith (On Remand)*, 209 Mich App 403, 408; 531 NW2d 749 (1995). Further, "[t]o be convicted of conspiracy to possess with intent to deliver a controlled substance, the prosecution was required to prove that (1) the defendant possessed the specific intent to deliver the statutory minimum as charged, (2) his coconspirators possessed the specific intent to deliver the statutory minimum as charged, and (3) the defendant and his coconspirators possessed the specific intent to combine to deliver the statutory minimum as charged to a third person."

People v Justice (After Remand), 454 Mich 334, 349; 562 NW2d 652 (1997). A defendant's specific intent, "like any other fact, may be proven indirectly by inference from the conduct of the accused and surrounding circumstances from which it logically and reasonably follows." *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992).

Contrary to defendant's position, our review of the record reveals that the evidence was sufficient to support defendant's conviction. Hours after coconspirator David Trevino was arrested on March 23, 2007, coconspirator Andon Filipi told defendant, "'That' has to be moved." In response to this, defendant took coconspirator Anthony Gonzalez to the taxi office, which was used by both defendant and Filipi and previously unknown to Gonzalez, and moved two heavy bags, which were hidden in the ceiling, to the trunk of a taxicab that defendant had backed up to the building. Testimony revealed that the bags were too heavy for their size to be holding marijuana.[1] Three days later, defendant rented a Ford SUV. Filipi and Gonzalez were driving this Ford SUV they were arrested for the cocaine in Michigan. Coconspirator Trevino's fingerprint was found on one of the packages of cocaine seized in Michigan. Defendant made a number of phone calls to both Filipi and Gonzalez around the same time that the officer stopped the Ford SUV. And, several hours later, around 7 p.m., defendant spoke with David Ruiz, who was Filipi's cocaine supplier. Half an hour later, defendant reported the Ford SUV stolen by his business partner, whose name he allegedly could not recall.

The juxtaposition of these facts creates an inference that the black bags contained cocaine, which was the same cocaine seized in Michigan, and that defendant had worked in concert with his coconspirators to achieve the concealment and delivery of the cocaine. Given that one of Trevino's fingerprints was recovered from one of the brick's of cocaine, a jury could reasonably infer that the bags in question contained the same 12 kilograms of cocaine that were later seized in Michigan. Further, the fact that defendant knew what Filipi was referencing when Filipi stated, "That has to be moved," demonstrates that defendant knew where the cocaine was concealed and tends to show that Filipi and defendant, knowing that Trevino had knowledge that the black bags contained cocaine, feared that Trevino might tell police about the bags' whereabouts. Further, once defendant found out that police had apprehended Filipi and Gonzalez and he had spoken to Filipi's cocaine dealer, defendant made attempts conceal his involvement in the matter by lying to the police that his rental car had been stolen. "A jury may infer consciousness of guilt from evidence of lying or deception." *People v Unger*, 278 Mich App 210, 227; 749 NW2d 272 (2008). Thus, when the evidence, as a whole, is viewed in a light most favorable to the prosecution, combining defendant's intimate knowledge of and involvement with the hidden bags, his active involvement with procuring the car used to transport the cocaine, his repeated contact with Filipi on the day of the cocaine arrest, his deceptive behavior with the police, and his contact with the cocaine supplier just prior to reporting the rented SUV stolen, a jury could reasonably have concluded that defendant was part of a conspiracy to deliver and/or possess with intent to deliver 12 kilograms of cocaine in Michigan. Accordingly, defendant's claim fails.[2] Because defendant's sufficiency of the

[1] Gonzalez also testified that the bags weighted approximately ten pounds each, or 20 pounds total. We take judicial notice that 12 kilograms equates to approximately 26 pounds.

[2] Defendant's contention that Gonzalez's testimony established that defendant never dealt with (continued…)

evidence argument fails, his argument that his guilty verdict is against the great weight of the evidence similarly fails.

II. 404(b) EVIDENCE

Defendant next argues that the trial court improperly admitted impermissible character evidence of past marijuana dealings in violation of MRE 404(b). While defendant concedes that this evidence was offered for a proper purpose, he argues that it was not relevant and that its probative value was substantially outweighed by the danger of unfair prejudice. We disagree. We review a trial court's decision whether to admit evidence for an abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001).

Generally, all evidence that is relevant is admissible, while irrelevant evidence is not admissible. MRE 402. However, "[w]here the relevance of the proposed evidence is to show the defendant's character or the defendant's propensity to commit crime, the evidence must be excluded." *People v Knox*, 469 Mich 502, 510; 674 NW2d 366 (2004); see also MRE 404(b)[3]. Nonetheless, evidence that implicates MRE 404(b) may be admissible, if it is offered for a proper purpose. *Knox*, 469 Mich at 509. A proper purpose is one other than establishing a defendant's character to show propensity to commit the charged offense. *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005). Further, the evidence must also be relevant and its probative value must not be outweighed by unfair prejudice. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993).

At trial, the prosecution elicited testimony that described several marijuana transactions that Gonzalez, Filipi, and defendant conducted. The first involved a trip from the Chicago area to Indiana sometime in 2007. Defendant and Gonzalez drove to a casino, met two individuals, picked up between 150 and 200 pounds of marijuana, and returned to Illinois. After returning to Illinois, defendant and Gonzalez met with Filipi, and they agreed that Gonzalez would store the marijuana in his apartment. The second marijuana transaction, about a month later, also involved Gonzales, Filipi, and defendant. Defendant and Gonzalez drove separately from Illinois to Indiana to meet the same two individuals again. Once they arrived, Gonzalez's truck was loaded with another 150 to 200 pounds of marijuana. Gonzalez drove his "loaded" truck

(…continued)

cocaine is unavailing. Gonzalez indicated that *he* never dealt with defendant with regard to cocaine. However, each conspirator need not have full knowledge of the extent of the conspiracy and a conspirator need not know of all the other conspirators. *People v Hunter*, 466 Mich 1, 7; 643 NW2d 218 (2002).

[3] MRE 404(b)(1) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identify, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

back to Illinois and defendant followed. Gonzalez and defendant then met up with Filipi and they agreed on how to store the marijuana. Testimony was also elicited regarding how these dealings evolved into the alleged cocaine transaction, i.e., Filipi knew a cocaine dealer who sold cocaine that did not "burn your nose." Given this testimony, defendant's contention that the prosecution failed to produce evidence in support of the purpose for which the MRE 404(b) evidence was offered is baseless.

This evidence was not offered to show that defendant had a propensity to deliver narcotics, but instead was offered to show the relationship between defendnat, Gonzalez, and Filipi, to explain how the relationship evolved over time, and to refute any claims of innocent intent or lack of knowledge.[4] Consequently, as defendant concedes, the evidence was offered for a proper purpose and did not run afoul of MRE 404(b). Moreover, the probative value of this evidence was not substantially outweighed by the risk of unfair prejudice. MRE 403. This is not a case where "marginally probative evidence will be given undue or preemptive weight by the jury." *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001). Rather, the evidence tended to show that defendant had an extensive relationship with both Filipi and Gonzalez, and also that defendant had knowledge of, and an intent to participate in, drug trafficking. This knowledge and intent makes defendant's defense, that all of his actions in the instant matter were mere innocent acts, less likely to be true. Accordingly, the evidence had a very high probative value.

Further, while it is clear that the evidence did possess some danger of unfair prejudice, i.e., because a jury could presume that because defendant was involved in marijuana transactions he was involved in a cocaine transactions, it cannot be said to substantially outweigh its probative value. In fact, we note that the trial court gave a limiting instruction, which forbade the jury from using the evidence in this improper manner. Since jurors are presumed to follow the court's instructions, *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009), the actual danger of unfair prejudice is lessened, see *People v Starr*, 457 Mich 490, 503; 577 NW2d 673 (1998). Because the evidence of the marijuana dealings was relevant, was offered for a proper purpose, and was not substantially more unfairly prejudicial than probative, the evidence was properly admitted. The trial court did not abuse its discretion by admitting the evidence and defendant is not entitled to relief on this basis.

III. PROSECUTORIAL MISCONDUCT

Finally, defendant contends that the prosecution engaged in several instances of misconduct that denied him a fair trial. We will review defendant's misconduct claims de novo, unless otherwise noted. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). The test is whether a defendant was denied a fair and impartial trial due to the actions of the prosecutor. *People v Rodriguez*, 251 Mich App 10, 29; 650 NW2d 96 (2002).

A. FACTS NOT IN EVIDENCE

[4] At trial, defendant repeatedly argued that his actions were simply innocent acts unrelated to any conspiracy.

Defendant first argues that the prosecutor argued facts not in evidence during opening statement and closing argument. Specifically, defendant maintains that the prosecutor, in both arguments, indicated that the bags in the taxi office contained cocaine and that defendant had knowledge of their contents. We disagree. Because defendant failed to object below, our review is for plain error affecting defendant's substantial rights. *Ackerman*, 257 Mich App at 448.

Defendant has failed to show any error. The evidence presented at trial showed that the bags were too heavy for their size to be carrying marijuana, that a police dog alerted to the presence of narcotics on the ceiling in the taxi office, that coconspirator Trevino's fingerprint was found on one of the packages of cocaine seized in Michigan, and that Filipi and defendant felt compelled to remove the hidden bags from the office within hours of Trevino's arrest. Prosecutors are permitted to argue from the evidence admitted and to make reasonable inferences in support of their case during closing argument, *People v Christel*, 449 Mich 578, 599-600; 537 NW2d 194 (1995). That is exactly what the prosecutor was doing here. Moreover, the prosecution's reference during opening argument, that the bags hidden in the ceiling contained cocaine, also did not constitute misconduct. As long as a prosecutor does not offer her personal belief of a defendant's guilt, a prosecutor can summarize what she thinks the evidence will show. *People v Ericksen*, ___ Mich App ___; ___ NW2d ___ (2010). Nonetheless, the reasonable inferences from the evidence produced at trial supported the prosecutor's opening statement. Defendant was not denied a fair trial due to the prosecutor's remarks in opening and closing argument.

B. TESTIMONY OF PROSECTUOR

Defendant next argues that the prosecutor provided false testimony, when she asked Gonzalez, "[H]ow long would you estimate that you were inside the building before you took the cocaine out?" Defense counsel immediately objected to this question, presumably on the basis that that there was no direct evidence that the bags removed from the building contained cocaine. Before the trial court could respond, the prosecutor apologized, "I'm sorry," and rephrased the question, to state, "[W]hen you took the bags out."

It is true that in extreme cases, "a prosecutor's probing into improper subject matter may be so prejudicial" that it denies a defendant a fair trial. *People v Griffin*, 235 Mich App 27, 45; 597 NW2d 176 (1999), rev'd on other grounds 477 Mich 146 (2007). However, that is not the case here. The prosecutor apologized and immediately posed a proper question to the witness. Thus, the question, while improper, did not deprive defendant of a fair trial. Defendants are guaranteed a fair trial, not a perfect trial. *People v Mosko*, 441 Mich 496, 503; 495 NW2d 534 (1992). Moreover, the trial court instructed the jurors that they were only to consider the evidence presented, which does not include the lawyers' questions to the witnesses. Thus, any error was cured by the instruction. *Unger*, 278 Mich App at 235.

C. IMPERMISSIBLE EXAMINATION

Defendant also claims that the prosecutor improperly elicited testimony that rental cars are indicative of drug trafficking and improperly asked Gonzalez why he was "afraid." Defendant, however, fails to explain why or how these statements denied him a fair trial. Instead, his allegations are conclusory. A defendant may not merely assert a claim of error and then leave it to this Court to search for factual or legal support for the claim. *People v Martin*,

271 Mich App 280, 315; 721 NW2d 815 (2006). Consequently, any claim by defendant questioning the validity of the inventory search itself is abandoned. See *id.* In any case, we fail to see how these lines of questioning denied defendant a fair trial in light of the trial court's instructions to the jury that the lawyers questions are not evidence and that it was not to consider any excluded evidence. See *Unger*, 278 Mich App at 235.

None of the incidents of alleged misconduct deprived defendant of a fair trial.

Affirmed.

/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly